

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEFFREY LOWE,

LAUREN LOWE,

GREATER WYNNEWOOD EXOTIC ANIMAL
PARK, LLC, and

TIGER KING, LLC,

Defendants.

Case No. 6:20-cv-00423-JFH

**UNITED STATES' LOCAL CIVIL RULE 7.1(d) MOTION TO CONSIDER
ITS MOTION TO ENFORCE CONFESSED**

The United States respectfully requests that the Court issue an order under LCvR 7.1(d) determining that the government's motion to enforce the Court's January 15, 2021 order is confessed, directing Defendants to immediately comply with the Court's January 15, 2021 order, and granting any additional relief the Court determines is appropriate. Defendants' failure to timely file a response brief and otherwise comply with court orders is part of a pattern and practice both in this case and in other related cases and the Court should use its discretion to address the matter.¹

¹ Pursuant to LCvR 7.1(f), government counsel emailed Defendants' counsel on March 1, 2021, to inquire about Defendants' delay in filing a response to the United States' motion to enforce and to alert Defendants' counsel that the government was considering filing a motion under LCvR 7.1(d). On March 4, 2021, government counsel informed Defendants' counsel that the United States intended to address the issue with the Court if Defendants did not file a response brief by March 5, 2021, as Defendants' counsel earlier in the week had represented Defendants would do. When Defendants neither filed a response brief nor a motion to file out of time as of March 8, 2021, government counsel once again emailed Defendants' counsel in the hope of quickly conferring on this motion. However, government counsel received an out of office message from Defendants' counsel, stating: "I am currently out of the office for the week of

I. Background

On January 15, 2021, the Court entered an order granting the United States' motion for preliminary injunction and motion for temporary restraining order. Dkt. 65. The Court ordered Defendants to, among other things: (1) retain a qualified attending veterinarian under formal arrangements consistent with the requirements of 9 C.F.R. §§ 1.1, 2.40, no later than January 29, 2021; and (2) provide acquisition and disposition records for any and all animals added to or missing from their inventories since June 22, 2020, no later than January 22, 2021. *Id.* at 33 (emphasis added). Defendants failed to meet those deadlines. The United States filed a motion to enforce the Court's order on February 12, 2021. Dkt. 72. Under LCvR 7.1(d), "[e]ach party opposing a motion or objection shall file with the Court Clerk and serve upon all other parties a response within fourteen (14) days, if applicable, from the date the motion or objection was filed." The notice of electronic filing produced by the filing of the United States' motion confirmed that Defendants' response brief was due February 26, 2021.

Ten days later, Defendants still have not filed a response to the United States' motion to enforce. Defendants did not request an extension before February 26, 2021, nor have they filed a motion to file out of time. On the morning of March 1, 2021, the United States contacted counsel for Defendants regarding Defendants' failure to timely file a response to the government's motion to enforce and alerted him to the government's plan to file a motion under LCvR 7.1(d). Counsel for Defendants responded that he marked the due date down as March 5, 2021, and needed until that date to file a response. However, March 5, 2021, came and went and still Defendants failed to file a response to the United States' motion.

II. Argument

Under LCvR 7.1(d), "[i]n the discretion of the Court, any non-dispositive motion or objection which is not opposed within fourteen (14) days may be deemed confessed." The United States requests that the Court use the discretion afforded it by the Local Rules in this case because Defendants have a pattern and practice of disregarding deadlines and court orders.

March 8 and will have very limited access to email. I will get back to you when I get back into the office." Accordingly, it appears that the United States is unable to confer with Defendants' counsel by telephone without waiting another week to do so. In light of the already significant delay in Defendants' response to the United States' motion to enforce, the steps the United States has taken in the last week to address the issue with Defendants' counsel, and the Court's discretion under LCvR 7.1(d), the United States files this motion without further delay.

Defendants have demonstrated a pattern and practice of flouting deadlines in this case. For example, Defendants failed to file responses to the United States' motions for preliminary injunction and temporary restraining order on time. Both responses had been due on January 6, 2021. Dkt. 27; Dkt. 33. Defendants failed to file either response on January 6, 2021 and did not timely file for an extension. Instead, on January 7, 2021, Defendants' counsel filed a motion to file out of time.² See Dkt. 43. Under the circumstances addressed by Defendants' counsel in his Sealed Motion to File Out of Time, some leniency was warranted. However, the only excuse provided by Defendants this time for their failure to comply with a deadline is that Defendants' counsel was not paying attention. And that only accounts for why Defendants did not file a response before March 5, 2021.

Moreover, failing to follow court orders appears to be not only the pattern of Defendants' counsel but also of Defendants themselves. The motion to enforce is directed at Defendants' failure to comply with the Court's January 15, 2021 order. See Dkt. 72. Currently pending in another case is a second application for an order to show cause why Jeffrey Lowe, Lauren Lowe, and Greater Wynnewood Exotic Animal Park, LLC should not be found in contempt for violating that court's order and injunction. *Big Cat Rescue Corp. v. Schreibvogel*, 5:16-cv-155, Dkt. 183 (W.D. Okl. Feb. 16, 2021). Mr. Lowe had already been found to be in contempt for failing to comply with a court order in the same case. See *id.*, Dkt. 179. Additionally, Lauren Lowe was recently found in contempt of a court order in another case after failing to timely file a response to the plaintiff's motion. *People for the Ethical Treatment of Animals v. Lauren Lowe*, No. 5:20-cv-00612, Dkt. 17 (W.D. Okl. Dec. 17, 2020).

III. Conclusion

In light of this pattern and practice of ignoring court orders and deadlines, and Defendants' failure to seek to file out of time more than a week after their response was due, the United States respectfully requests that the Court issue an order deeming the United States' motion to enforce the Court's January 15, 2021 order confessed under LCvR 7.1(d), directing Defendants to

² Around that time, Defendants also failed to timely file an answer to the U.S. Department of Agriculture's amended complaint against them. *In re: Jeffrey Lee Lowe; Lauren Lowe; and Greater Wynnewood Exotic Animal Park, LLC*, AWA Docket Nos. 20-J-152, 20-J-153 and 21-J-003 (U.S.D.A), respectively. Similarly, Defendants' counsel did not bother to file a motion for an extension of time.

immediately comply with that order, and granting any additional relief the Court determines is appropriate.

DATED: March 8, 2021

Respectfully Submitted,

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